IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
APPEAL NO.54 OF 2006
IN
NOTICE OF MOTION NO.3105 OF 2004
IN
SUIT NO.2922 OF 2004

Kaira District Co-operative Milk
Producers Union Ltd. and another .. Appeallnts
v/s.
Anmol Ice Cream and another .. Respondents

Mr.Virag Tulzapurkar with Mr.R.H.Gajaria i/by M/s.Gajaria & Co. for the appellants.

Mr.Dhiren Shah for the respondents.

CORAM : R.M. LODHA &
ANOOP V.MOHTA, JJ.

DATED : 7TH FEBRUARY, 2006.

P.C.

Heard.

2. Admit.

3. Mr.Dhiren Shah, advocate waives service for the respondent.

4. By consent, the appeal is heard finally at this stage.

5. The advocate for the respondents handed in the statement on behalf of the respondents (original defendants). The statement is marked "X" for identification purposes and it reads thus-

> "1. The Defendants undertake to this Hon'ble Court that they shall not in any manner use the trademark, font, stylized writing and the labels with the layout, colour scheme and get-up depicted in Exhibits A, C,D and E to the plaint or any other trademark, font,

stylized writing, layout, colour scheme and get up deceptively similar to the same.

2. The Defendants further undertake to this Hon'ble Court that they shall not in any manner use the labels/cartons with the layout, colour scheme or get-up in Exhibit G and I to the plaint or any other label with a layout, colour scheme or get-up deceptively similar to the same."

6. The learned counsel for the appellants is satisfied with the statement of the respondents as set out above.

7. We are also satisfied that in view of the statement made by the respondents, the grievance sought to be raised by the appellants-original plaintiffs does not need to be gone into merits.

8. We find that the learned Motion Judge while disposing of the notice of motion has directed the appellants-original plaintiffs to pay a cost of Rs.20,000/- to the defendants. We find no justification in award of the said cost.

9. We, accordingly, dispose of the appeal by the following order:-

(i) The respondents are directed to abide by the statement made before us as set out above.

(ii) The award of cost of Rs.20,000/- by the learned Motion Judge is set aside.

(R.M.LODHA, J.)

(ANOOP V. MOHTA, J.)